

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1237 of 1998

in

SPECIAL CIVIL APPLICATION No 7102 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and  
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HEMANG DHIRUBHAI PATEL

Versus

SARDAR PATEL UNIVERSITY

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Appearance:

MR DF AMIN for Appellant

MR NV ANJARIA for Respondent No. 1

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CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and  
MR.JUSTICE M.S.SHAH

Date of judgment: 05/11/98

ORAL JUDGMENT:

(Per M.S.Shah J. ):

This appeal under Clause 15 of the Letters Patent is directed against the judgment and order dated 15-9-1998 passed by the learned Single Judge substantially dismissing Special Civil Application No. 7102 of 1998.

2. The facts leading to filing of the petition as averred by the petitioner, are as under:

2.1. After passing Higher Secondary Examination the appellant-petitioner secured admission to the First Year of Bachelor of Pharmacy(hereinafter referred to as the B.Pharm.) course in respondent no.2 College at Vallabh Vidyanagar (affiliated to respondent no.1 - Sardar Patel University ) in August 1996. The appellant appeared at the F.Y.B.Pharm annual examination conducted by the respondent University in August 1997 but was declared to have failed at the said examination. The appellant, however, secured exemption in three out of twelve papers. The appellant, therefore, again appeared at the F.Y.B.Pharm examination held in November 1997 for the remaining nine papers. The result was declared on 20-12-1997 and on that day the appellant was given mark-sheet (Annexure A to the petition ) by the respondent University. The mark-sheet mentioned that in 8 out of the 9 papers the appellant had secured more than minimum marks for passing in individual paper i.e. more than 40 out of 100 marks, but in the subject of Pharmaceutical Mathematics the appellant was awarded only 14 out of 100 marks. The "Total" column in the marksheet was blank but the "Result" column mentioned " ATKT " meaning thereby the appellant was " Allowed to Keep Terms " that is, the appellant would be allowed to join the Second Year B.Pharm Course in the next academic year and would be permitted to appear at the S.Y.B.Pharm examination but he will not be permitted to join the third year B.Pharm Course until he clears not only the Second Year B.Pharm Examination but also the F.Y.B.Pharm Examination in Pharmaceutical Maths.

2.2. The next examination for F.Y.B.Pharm was scheduled to be held in July 1998 and the examination forms were required to be filled in, in April 1998. The appellant accordingly filled in the form for the F.Y.B.Pharm examination only for the subject of Pharmaceutical Maths on 24-4-1998 and appeared at the examination in Pharmaceutical Mathematics in July 1998. The result of the said examination was declared on 17-8-1998.

2.3. When the appellant went to the College to make inquiries about the results, he was informed by the College authorities that there was a mistake in the result of November 1997 examination and, therefore, the result of the examination in Pharmaceutical Mathematics held in July 1998 will not be declared. The second year of B.Pharm term was to commence on 17-8-1998 i.e. immediately after declaration of the result of F.Y.B.Pharm examination held in July 1998, but the appellant was not allowed to keep the terms in the second year of the B.Pharm Course on the ground that "ATKT" given to the appellant as per the mark-sheet dated 20-12-1997 was on account of a mistake. The appellant, therefore, made a representation dated 20-8-1998 (Annex.B) requesting the respondent College management to grant admission to the petitioner to the Second Year B.Pharm Course in view of the marksheet dated 20-12-1997 granting ATKT to the petitioner.

2.4 The appellant filed Special Civil Application No.7102 of 1998 on 31-8-1998 for the following reliefs:

- (B). To direct the respondents to issue revised mark-sheet and to permit the petitioner to appear at the October 1998 examination in required papers.
- (C). To direct the respondents to accept the form of the petitioner for October 1998 examination even if the last date for submission thereof has expired.
- (D). To direct the second respondent to issue to the petitioner form for admission to S.Y.B.Pharm Course and to permit him to keep the term of S.Y.B.Pharm which has commenced from 17-8-1998."

2.5 In the affidavit-in-reply filed by the Deputy Registrar of the respondent University it was stated that it was a sheer computer mistake because of which A.T.K.T. was mentioned in the petitioner's mark-sheet. It is further stated that as per Regulation 12 of B.Pharm, a candidate who obtains 50% of the total marks assigned to the whole examination and passed in all the Heads but three at any one examination will be promoted to the subsequent year. These conditions were not fulfilled by the petitioner and therefore, he was not eligible for A.T.K.T.

2.6. After hearing the learned Counsel for the parties

the learned Single Judge dismissed the petition on the ground that the appellant was not entitled to ATKT and therefore, the appellant was not entitled to get the benefit of the mistake. However, the learned single Judge directed that the Form of the appellant for appearing at the F.Y.B. Pharm Examination in October 1998 shall be accepted. The said judgment of the learned single Judge not granting prayer (D) quoted above is assailed in the present Appeal.

3. We have heard Mr.D.F.Amin learned Counsel for the appellant and Mr.N.V.Anjaria learned Counsel for the respondents. In the facts and circumstances of the case and in view of the urgency involved in the matter, we have taken up the Appeal for final disposal today.

4. The learned Counsel for the appellant-petitioner has submitted that since the respondent- University itself had mentioned in the marksheet dated 20-10-1997 that the appellant was allowed to keep the terms ( meaning thereby that the appellant could keep the terms in the second year of B.Pharm Course and that he would be permitted to appear at the S.Y.B.Pharm Examination if he passes the F.Y.B.Pharm Examination in Pharmaceutical Mathematics), at the July 1998 examination the appellant appeared at the F.Y.B.Pharm examination only in the paper of Pharmaceutical Mathematics and that till then the appellant was never informed about any mistake in the marksheet for the November 1997 examination. If the appellant had been informed about the mistake earlier the appellant would have appeared at the F.Y.B.Pharm examination in all the papers in July 1998 and upon clearing the said examination the appellant would have been entitled to get admission to the Second Year of B.Pharm Degree Course in the academic term commencing from 17-8-1998.

5. On the other hand, the learned Counsel for respondents has contended that the appellant was wrongly granted "ATKT" in November 1997 examination because as per the University Regulations a student cannot get ATKT if he has not secured at least 50% of the aggregate marks. The relevant Regulation reads as under:

12. A candidate who obtains 50% of the total marks assigned to the whole examination and passes in all the Heads but three at any one examination will be promoted to the subsequent year according to the following scheme:

(1) A candidate who fails at the First B.Pharm Examination in not more than three heads of passing will be permitted, at his option, to keep terms for the Second B.Pharm. Course. However, he will not be allowed to join the Third B.Pharm Course unless he has passed in all the remaining subjects of the First B.Pharm. Examination in which he has failed though the candidate may have qualified to join Third B.Pharm Course on the basis of Second B.Pharm results."

(2). ....

(3). ...."

Since the appellant had obtained less than 50% aggregate marks, the appellant was not eligible to get the benefit of ATKT rule. It was a sheer mistake of the Computer because of which the ATKT was mentioned in the mark-sheet of the appellant. Hence the appellant had failed to pass the F.Y.B.Pharm examination held in November 1997 and was, therefore, required to appear at the examination in all the papers in which he had obtained less than 50% marks.

6. Having heard the learned Counsel for the parties at length we are of the view that since the remark "ATKT" was made in the appellant's mark-sheet dated 20-12-1997 by mistake the appellant was not entitled to get exemption from appearing at the F.Y. B.Pharm examination in the relevant papers in which he had obtained less than 50% marks and therefore, the respondents rightly required the appellant to appear at all the six papers in which the appellant had obtained less than 50% marks in the previous examination. Nonetheless on account of the delay on the part of the respondents in detecting and pointing out the said mistake the appellant missed opportunity to appear at the examination in the said six papers of F.Y.B.Pharm Course in July 1998 for which the forms were already filled in, in April 1998. In fact, till the said examination was over the appellant was never informed about the mistake in the mark-sheet dated 20-12-1997. If the said mistake had been pointed out to the appellant well in time, the appellant could have appeared at the F.Y.B.Pharm Examination in all the relevant six papers in July 1998 and if he had cleared the same he would have been entitled to secure admission to the Second Year of B.Pharm Course. It is, therefore, clear that on account of the delay on the part of the

respondents in pointing out the mistake the appellant could appear at the relevant six papers of F.Y.B.Pharm Course only in October 1998, the results of which are likely to be declared within a month as stated by the learned Counsel for the respondents. If the respondents were to have their say, even if the appellant is declared to have passed at the said October 1998 examination, he would be given admission to the second year B.Pharm only in July/August 1999 and he would be permitted to appear at the Second Year B. Pharm Examination some time in July 2000, meaning thereby the appellant would be losing the entire academic year 1998-99 on account of the delay on the part of the respondent authorities in not pointing out the mistake in the mark-sheet dated 20-12-1997 well in time. It is pertinent to note that the mistake is attributed to the Computer and no role is attributed to the appellant for anything which resulted into that mistake. We, therefore, see no reason why the appellant should be made to suffer loss of one academic year for the delay on the part of the respondent authorities in not detecting and pointing out the mistake earlier.

7. In view of the foregoing discussion, we accept the submissions made by the learned Counsel for the appellant-petitioner that pending declaration of the result of the F.Y.B.Pharm examination held in October 1998, the appellant deserves to be permitted to attend the classes in the S.Y.B.Pharm Course from 9-11-1998 and if the appellant is declared to have passed the F.Y.B.Pharm Examination held in October 1998, upon payment of requisite fees the appellant shall be given admission to the S.Y.B.Pharm Course for the academic year 1998-99 and permitted to appear at the S.Y.B.Pharm Examination to be held in the year 1999 without raising any objection about non-attendance in S.Y.B.Pharm Classes till 9-11-1998.

In case the appellant fails to pass the F.Y.B.Pharm Examination held in October 1998, the appellant will not be granted admission to S.Y.B.Pharm Degree Course in the academic year 1998-99.

8. The appeal is accordingly allowed. The judgment of the learned Single Judge is set aside and the petition is allowed to the extent that the respondents shall permit the appellant to attend the classes for the S.Y.B.Pharm Course from 9-11-1998 and upon the appellant passing the F.Y.B.Pharm Examination conducted in October 1998, subject to payment of requisite fees, the respondents shall grant the appellant admission to the Second Year

B.Pharm Course for the academic year 1998-99 and while considering appellant's case for permitting him to appear at the S.Y.B.Pharm Examination to be held in 1999 shall not raise any objection as to the non-attendance of the appellant in the S.Y.B.Pharm Course till 9-11-1998.

In case the appellant fails to pass the F.Y.B.Pharm Examination held in October 1998, there would be no question of granting admission to the appellant in the S.Y.B.Pharm Course for the academic year 1998-99.

9. The appeal is accordingly allowed in terms of the aforesaid directions with no order as to costs.

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